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FEB 17 2012

ARIZONA CORP. COMM  
400 W CONGRESS STE 218 TUCSON AZ 85706

2012 FEB 21 P 4:26

AZ CORP COMMISSION  
DOCKET CONTROL

ACTION IN WRITING BY THE MANAGERS  
OF RATTLESNAKE PASS, LLC,  
an Arizona limited liability company

Pursuant to the authority granted by the laws of the State of Arizona, the undersigned, being the Manager of Sidewinder, LLC, a New Mexico limited liability company which is the Manager of Rattlesnake Pass, LLC, (the "Company") does hereby take the following action without a meeting and unanimously consent to the action so taken which shall have the same force and effect as a unanimous vote of the Manager at a meeting called, noticed, and conducted for the purposes of taking such actions.

RESOLVED:

That Greg Mitchell of Sidewinder, LLC is authorized to represent the Company before a Arizona Corporation Commission as provided for under Rule 31(d)(3), Rules of the Supreme Court and A.R.S. § 40-243.

IN WITNESS WHEREOF, the undersigned, being the Manager of the Company, has hereunto set his hand as of this 17 day of February, 2012.

Arizona Corporation Commission

DOCKETED

FEB 21 2012

DOCKETED BY	<i>MM</i>
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SIDEWINDER, LLC, a New Mexico limited liability company

By: *MM*

Its: *Manager*



# Arizona Corporation Commission Formal Complaint

## Testimony and Evidence for Hearing

Complainant: Rattlesnake Pass, L.L.C.  
Greg Mitchell, Manager  
6045 N. Abington Road  
Tucson, AZ 85743

Phone #: 520-603-8053

Complaint Number: 84885

Date: February 17, 2012 (original complaint dated 4/2/10)

Utility Name: Tucson Electric Power Company

Rattlesnake Pass, L.L.C. (RP) hereby provides the following narrative and attached documents as evidence and testimony for the case of Rattlesnake Pass, LLC, Complainant, vs. Tucson Electric Power Company, Respondent. RP will call its manager, Greg Mitchell.

RP has not, nor does it intend to, grant permission to TEP to utilize RP's privately owned property. TEP's blatant disregard for ARS §13-1502 in installing the voltage regulator bank (see Figure 1) violates ARS §40-361(B)<sup>1</sup>. ARS §40-361(B) reads such that a public service corporation must maintain service and equipment "as will promote safety, health, comfort and convenience..." Without the permission of the privately owned land owner, TEP will be unable to adhere to ARS §40-361(B) as TEP's easement is not wide enough to support the equipment necessary for maintenance or repair of the voltage regulator bank. If the regulator bank is inoperative at any point in time, for whatever reason, an immediate public safety situation (power outage) and possible health concerns will result to TEP patrons and the general public.

TEP, a public service corporation, violated ARS §40-361(B) in August of 2009 by installing voltage regulating equipment on an existing 1942 easement located on privately owned property (RP property). TEP states they have installed "...an electric transmission or distribution

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<sup>1</sup> 40-361B. Every public service corporation shall furnish and maintain such service, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient and reasonable.



1 line or (line) system thereon.” TEP's voltage regulating equipment provides service to  
2 thousands of public persons. The equipment installation on RP property creates a safety  
3 violation of ARS §40-361(B).

4 TEP's existing easement on RP's land was not and is not adequate for safe access to TEP's newly  
5 installed overburdening voltage regulator bank. TEP's violation of ARS §40-361(B) “Safety” is  
6 only one voltage regulator bank maintenance period or emergency situation away. To await a  
7 maintenance or storm incident condition whereby TEP personnel response would violate ARS  
8 §13-1502<sup>2</sup> (criminal trespassing) as well as ARS §13-1602<sup>3</sup> (criminal damage) in order to service  
9 or repair TEP's regulator bank is unsafe to the public's comfort and convenience and unsafe for  
10 TEP personnel as well. TEP has no established adequate legal access per the reasonableness  
11 standards of ARS §40-361(B). See Figure 4 for an example of TEP's typical overhead service  
12 equipment.

13 TEP has been formally notified that RP would not allow TEP personnel to illegally trespass again,  
14 in direct violation of ARS §13-1502, in February, 2010. RP filed a formal complaint with the ACC  
15 on 2 April, 2010, citing TEP for this inadequate easement accessibility / potential public safety  
16 condition (not being able to maintain their equipment).

17 A person might ask what the responsible act of a reasonable utility company would be? Maybe,  
18 the evaluation of the existing easements, understanding the complaint – filed by one of TEP's  
19 own customers, and relocate the overburdening voltage regulator bank and equipment to an  
20 appropriate site with proper easements for safe and reasonable accessibility. Instead TEP has  
21 attempted to deceive RP and the ACC into believing TEP can adequately access their regulator  
22 bank equipment safely without criminal trespassing.

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<sup>2</sup> 13-1502. Criminal trespass in the third degree; classification; A. A person commits criminal trespass in the third degree by: 1. Knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry.

<sup>3</sup> 13-1602. Criminal damage; classification; A. A person commits criminal damage by recklessly: 1. Defacing or damaging property of another person; or 2. Tampering with property of another person so as substantially to impair its function or value; or 3. Tampering with or damaging the property of a utility. 4. Parking any vehicle in such a manner as to deprive livestock of access to the only reasonably available water. 5. Drawing or inscribing a message, slogan, sign or symbol that is made on any public or private building, structure or surface, except the ground, and that is made without permission of the owner.



1 It is the RP's opinion that TEP has not been efficient or reasonable in correcting the  
2 overburdening voltage regulator bank condition, a direct violation of ARS §40-361(B) (safety,  
3 efficient and reasonable). It is likely TEP's legal costs associated with its attempt to dismiss RP's  
4 complaint exceeds the \$20,000 value TEP has stated it would cost them to relocate the  
5 regulator bank.

6 TEP has created the following hazardous condition: When the voltage regulator bank needs  
7 service, TEP's belief that they have lawful authority to trespass per Arizona Administrative Code  
8 R-14-2-206(C), 207(E)(2)(a), and A.R.S. §40-431<sup>4</sup> will cause its personnel to gain access by  
9 utilizing land outside TEP's 10' wide easement (reference Figures 1, 2 and 3) [which is how TEP  
10 installed the voltage regulator bank in August of 2009]. TEP states that the regulator bank at  
11 issue is necessary for the safety of the public and therefore compliance with ARS §40-361(B).  
12 However, because TEP chose to install the voltage regulator bank within a confined 10' wide  
13 easement, without any access other than the easement itself, TEP has no way of safely servicing  
14 this equipment without violating ARS §13-1502. TEP is directly violating ARS §40-361(B) when  
15 TEP states, under the color of law, that TEP can use the surrounding land, which is  
16 unencumbered by TEP's easement. RP, in protecting and enforcing its private property rights,  
17 may exclude TEP personnel and equipment (such as trucks, cranes, etc.) from entering the  
18 areas of RP's property outside TEP's 10' easement.

19 If the regulator bank becomes inoperative at any point in time, for whatever reason, this  
20 situation will cause an immediate public safety (power outage) and health concern to all parties  
21 involved, including TEP working personnel.

22 TEP states they can legally use areas outside TEP's 10' easement to access, install, and service  
23 their voltage regulator bank, specifically an area of land immediately west of their 10' wide  
24 easement. TEP's 10' wide easement of 1942, unlike TEP's other easement of 1952 across RP's

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<sup>4</sup> 40-431. Preventing officer or agent of public service corporation from examining property; violation; classification:

A. A duly appointed and authorized officer or agent of a public service corporation may, at all reasonable times, upon exhibiting written authority signed by the president, secretary or manager of the corporation, enter any premises using the product of such corporation for the purpose of inspecting and examining the property of the corporation, or for ascertaining the quantity of its product consumed.

B. A person who knowingly prevents or interferes with such officer or agent entering such premises or making such examination or inspection is guilty of a class 2 misdemeanor.



1 land to the east (reference Figures 6 and 7), does not provide TEP any area outside of the 10'  
2 wide easement itself for access. TEP has previously stated to the ACC that they can "co-utilize"  
3 the land with EPNG and use EPNG's easement to the west of TEP's easement. TEP has not  
4 provided this agreement to RP or the ACC.

5 EPNG's easement does not give EPNG the right to do anything unrelated to service of its own  
6 pipeline and equipment (see Figure 8). Furthermore, as of 2005 (reference Figures 9-17,  
7 specifically the circled locations of Figures 9, 13, and 16), EPNG's easement is no longer  
8 adjacent to TEP's easement. There is an approximately a 7' wide strip of RP's land separating  
9 the EPNG easement from the TEP easement that is not part of any easement.

10 In conclusion, to comply with ARS §40-361(B), TEP needs to relocate the voltage regulator bank  
11 to a location where they have adequate access to service it, such as in, or next to, the public  
12 right of way, because they cannot safely service it within their dedicated 10' wide private  
13 property easement where it currently resides. This will ensure that TEP's voltage regulator  
14 bank can be safely and legally accessed by TEP personnel for general maintenance as well as for  
15 any emergency situation that might occur. This simple relocation, as it was prior to the  
16 installation of this regulator bank in August of 2009, will remove safety risks to the public, TEP  
17 personnel, myself and my family.

18 This testimony and evidence filed with the Arizona Corporation Commission against Tucson  
19 Electric Power Company is hereby made by the manager of Rattlesnake Pass, LLC this 17<sup>th</sup> day  
20 of February, 2012.

21 

22 Greg Mitchell, Manager, Rattlesnake Pass, LLC

23 Original and 13 copies hand delivered to the ACC this 17th day of February, 2012

24  
25 Copy mailed this 17th day of February, 2012 to:

26 Jason D. Gellman  
27 Roshka, DeWulf & Patten, PLC  
28 400 E. Van Buren Street, Suite 800  
29 Phoenix, AZ 85004

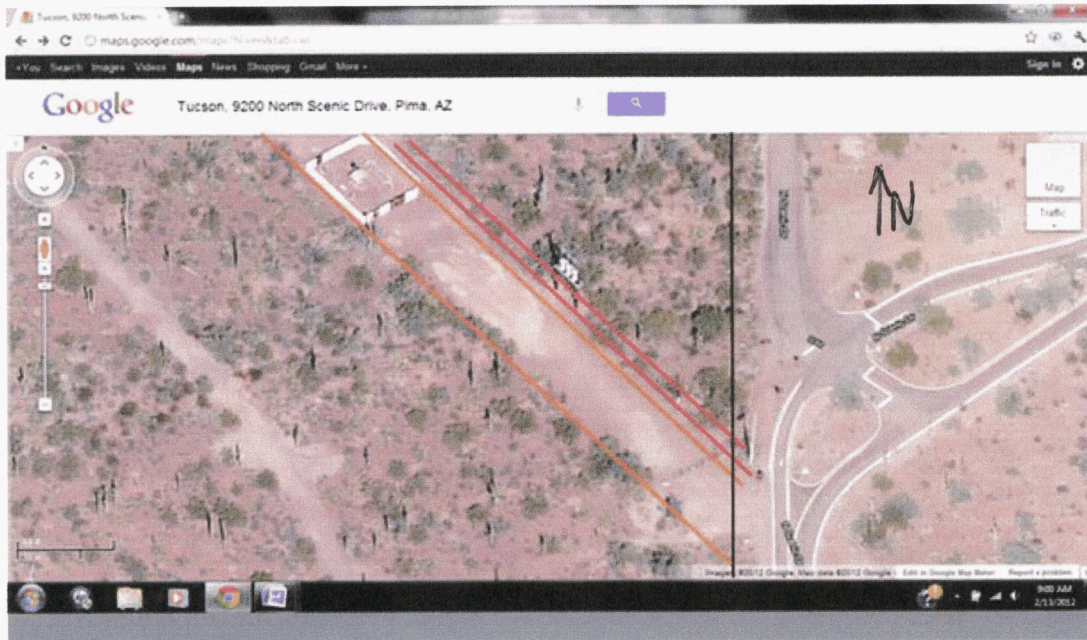




**Figure 1: Photograph of TEP's easement outlined with Orange mesh fencing and EPNG's easement in Yellow caution tape**

Orange mesh fencing material indicates the 10' width of TEP's easement. The yellow caution tape is at the eastern end of EPNG's easement. The 7' strip of land belonging to RP between these two parallel easements is unencumbered. TEP has no legal right to use any land outside TEP's 10' wide easement to access and service equipment TEP places within its easement. Therefore, TEP's selecting to place this voltage regulator bank at this precise location causes a public safety issue/concern which is a violation of ARS 40-361(B).





**Figure 2: Overhead oblique view of RP property, EPNG easement and TEP's easement**

**Figure 2 & Figure3: Area between red lines indicate TEP's 10' wide easement. Area between orange lines indicates EPNG's 40' easement. The black line indicates west boundary of Scenic Drive Public Right of Way. All land west of the black line is private property owned by RP.**



**Figure 3: Overhead view of RP property, TEP boundary lines omitted with reference to public right of way**

**Note: the superimposed TEP easement boundary lines are omitted from this overhead picture to facilitate viewing the actual overhead power lines. The outside two overhead power lines are 8 feet apart, therefore TEP's easement lies 1' outside of the these two lines. The thin black lines are the Scenic Drive Public Right of Way, with the thin red line being its center line.**





Figure 4: An example illustrating TEP's service equipment in use



Figure 5: View from Scenic Drive. Gated private property posted No Trespassing



594 694

1942 TEP

Book 96

2147 Rev. 5-1

RIGHT-OF-WAY EASEMENT

THIS INSTRUMENT, made this 15th day of June, 1942, by and between Ruth Keall Pine, as her separate property, party of the first part, and THE TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a corporation, party of the second part;

WITNESSETH: That the party of the first part, for and in consideration of the sum of \$ one and no/100 ...., lawful money, and other valuable considerations, receipt whereof is hereby acknowledged, has granted and conveyed, and by these presents does grant and convey unto the said party of the second part, its successors and assigns, a right-of-way or easement in, on, through, over and across the following, described lands for the purpose of constructing, operating, and maintaining an electric transmission or distribution line or system thereon:

A strip ten feet (10') wide in the northeast quarter (NE-1/4) of the southwest quarter (SW-1/4) and the east half (E-1/2) of the northwest quarter (NW-1/4) of Section 20, Township 12 South, Range 12 East, G. and S. N. E. and W. Pine County, Arizona, east of and along the east boundary line of the El Paso Natural Gas Company's right of way, as now established.

Said second party is hereby granted the right and privilege to own, construct, operate and maintain said electric line or system in, on, through, over and across said real estate with all poles, cross arms, cables, wires, guys, supports, fixtures, anchors, stays and devices used or useful in the construction or operation of said line, to permit the attachment of wires and fixtures of any other company, and to do all other matters and things convenient or expedient in the construction or operation of an electric line, to construct and maintain telephone circuits, to enter upon said premises at all times, to survey, construct, repair, operate, control and use said lines, to remove objects or obstacles therefrom, to trim trees or other growths interfering or dangerous to the operation of said line, or to remove the whole or any part of said line at the discretion of said party of the second part.

The undersigned covenants that she is the owner of the above described land, and that said lands are free of encumbrances and liens of whatsoever character, except those held by the following persons: None

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set her hand and seal this day and year first above written.

Ruth Keall Pine

California  
STATE OF ARIZONA }  
County of Pima } ss.  
Los Angeles

This instrument was acknowledged before me, the undersigned notary public, by Ruth Keall Pine the 15 day of June 1942.

J. S. Hudson  
Notary Public.  
(NOTARY SEAL)

My Commission expires:  
MY COMMISSION EXPIRES DEC. 19, 1945

Filed and recorded at request of The Tucson Gas, Electric Light & Power Co Jul 13 at 9:50 AM 1942

#5410 COMPALED  
Filed in 1942  
Filed by 124

Anna Sallinger, County Recorder  
By Margaret C. Sallinger Deputy  
MCL

2147 Rev. 5-42

RIGHT-OF-WAY EASEMENT

THIS INSTRUMENT, made this 17th day of June, 1942, by and between Carlos G. Robles and Clementina Robles, his wife, parties of the first part, and THE TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a corporation, party of the second part;

WITNESSETH: That the parties of the first part, for and in consideration of the sum of \$ one and no/100....., lawful money, and other valuable considerations, receipt whereof is hereby acknowledged, have granted and conveyed, and by these presents do grant and convey unto

Figure 6: 1942 TEP's 10 foot easement



1952  
TEP  
20' easement  
+ outside area

BOOK 531 PAGE 230

STATE OF ARIZONA )  
COUNTY OF PIMA )  
I hereby certify that the within instrument was filed for record in Pima County, State of Arizona

Without my hand and Official Seal

Indexed	Filed	Registered

County Recorder

No. 49925  
Book 531 Page 230  
Date: \_\_\_\_\_  
Request of: \_\_\_\_\_

By Norman J. Mearns Deputy  
Feby 15

INT Rev. 5-12

**RIGHT-OF-WAY EASEMENT**

This instrument, made this 28th day of October, 1952, by and between  
S. F. Mearns, a single man,

part of the first part, and THE TUCSON GAS ELECTRIC LIGHT AND POWER COMPANY, a corporation, party of the second part;

WITNESSETH: That the party of the first part, for and in consideration of the sum of \$ 50.00 lawful money, and other valuable considerations, receipt whereof is hereby acknowledged, has granted and conveyed, and by these presents does grant and convey unto the said party of the second part, its successors and assigns, a right-of-way or easement in, on, through, over and across the following described lands for the purpose of constructing, operating and maintaining an electric transmission or distribution line or system thereon:

A strip 20 feet in width through the SE 1/4 of the NW 1/4 of Section 20, T12S, R12E, CASHMAN, Pima County, Arizona, the center line of said 20-foot strip being particularly described as follows:

Beginning at a point in the east boundary of said SE 1/4 of the NW 1/4 of Section 20, from which the center quarter corner of said Section 20 bears S 00° 24' E, a distance of 32 feet, run thence N 45° 31' W, a distance of 991 feet to a point; run thence N 59° 26' W, a distance of 330 feet to a point; run thence S 76° 34' W, a distance of 493 feet, more or less, to a point in the west boundary of said SE 1/4 of the NW 1/4 of said Section 20.

The party of the second part is hereby further granted the right and privilege to install such guys and anchors outside of the said 20-foot strip as may be necessary to support the said line, maintain clearance for roads, for otherwise facilitate proper construction of the said line. The party of the second part is hereby granted the right and privilege to install gates in any fences which may at any time be erected across said 20-foot strip.

Said party of the second part is hereby granted the right and privilege to own, construct, operate and maintain said electric line or system in, on, through, over and across said real estate with all poles, cross arms, cables, wires, guys, supports, fixtures, anchors, insulators and devices used or useful in the construction or operation of said line, to permit the attachment of wires and fixtures of any other company, and to do all other matters and things convenient or expedient in the construction or operation of an electric line, to construct and maintain telephone circuit, to enter upon said premises at all times, to survey, construct, repair, operate, control and use said lines, to remove objects or obstacles therefrom, to trim trees or other growths interfering or obstructing to the operation of said line, or to remove the whole or any part of said line at the discretion of said party of the second part.

The undersigned covenant, covenants, be, is, the owner, of the above described land, and that said lands are free of encumbrances and liens of whatever character, except those held by the following persons:

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and seal, the day and year first above written.

STATE OF ARIZONA  
County of Pima  
I, S. F. Mearns, was acknowledged before me, the undersigned notary public, by  
S. F. Mearns,  
on the 28th day of October, 1952.  
My Commission expires: 2/3/54

S. F. Mearns  
Notary Public

Figure 7: 1952 TEP 20 foot easement



# 1933 EPNG

125

Book 51

STATE OF ARIZONA  
 County of Pima  
 KNOW ALL MEN BY THESE PRESENTS, that the undersigned grantor for and in consideration of the sum of \$1000.00 Dollars in hand paid by Western Gas Company, a Corporation hereinafter called Grantor, the receipt of which is hereby acknowledged, do hereby grant, sell and convey unto the said grantee, its successors and assigns, a right of way to construct, maintain and operate a pipe line and all necessary appurtenances thereto: To construct, maintain and operate a gas pipeline and appurtenances thereto, the construction, maintenance and operation of which shall be subject to the following conditions, covenants and agreements: That the said gas pipeline shall be constructed through the following described property lying and being situated in Pima County, State of Arizona, to wit: East half NW quarter and SE quarter SW quarter, Section 20, Township 14 South, Range 12 East

said property being more fully described in the deed from Frederick L. Pine dated the 15th day of November, 1924, recorded in Volume 10 of the Deed Records of

County, Arizona, in which reference is here made for further description of said property; and pipe line to be constructed along the line designated by a survey heretofore made, or hereafter to be made, by the grantor, through and over the property before described; and this grant shall carry with it the right of ingress and egress to and from said land for the purpose of constructing, inspecting, repairing and maintaining said pipe line, and the right of way to and from said land for the purpose of constructing, inspecting, repairing and maintaining said pipe line.

TO HAVE AND TO HOLD the above described right and easement, together with any other rights necessary to operate and maintain a pipe line, over the above described premises unto the said grantee, its successors and assigns. The grantor shall fully use and enjoy the said premises except for the purposes herein granted to the grantee, but such use shall not hinder, conflict or interfere with the exercise of grantee's rights hereunder and no building, erection or structure shall be constructed upon, under or across the right of way or easements herein granted, without grantee's written consent.

The grantor agrees to bury all pipes to a sufficient depth so as not to interfere with the cultivation of the soil and to pay all damages to crops and fences which may arise from the construction, maintenance and operation of said pipe line.

It is mutually understood and agreed that in the event any dispute arises relative to the amount of damages suffered arising from the laying, maintaining, operating or removing any of the pipe line of the grantor, said damages shall be mutually agreed upon, shall be ascertained and determined by three disinterested persons, one to be appointed by the owner of the land, his or their heirs or assigns, one by the Grantor, its successors or assigns, and the third person by the two persons before mentioned, and the decision of the arbitrators thus selected shall be final and conclusive.

There is hereby granted to the Grantee herein the right to construct, maintain and operate on the above described property additional pipe lines, the same to run parallel with and adjacent to the pipe line above referred to, and in the event Grantor exercises this right to lay an additional pipe line or lines, the Grantor shall pay Grantor the sum of twenty-five (25) cents per lineal foot for each additional pipe line so laid; same to be laid, maintained and removed under the same rights, privileges and obligations as provided above.

It is further understood that the Grantee may assign the rights herein granted, either in whole or in part, subject to the terms of this grant.

It is hereby understood that the parties securing this grant in behalf of the Grantor are without authority to make any covenant or agreement not herein expressed.

WITNESS THE EXECUTION HEREOF the 15th day of November, A.D. 1924.

Right of Way Agent for Grantor Mrs. F. D. Pine

District of Columbia  
 District of Columbia

Before me, a notary public in and for the County of Pima, Arizona, on this day personally appeared Mrs. F. D. Pine known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 15th day of November, 1924.

My commission expires 15th day of January, 1926.

(NOTARY SEAL) Lawrence G. Moore, Notary Public in and for the County of Pima, State of Arizona.

STATE OF ARIZONA  
 County of Pima

Personally appeared before me this 15th day of November, 1924, to me personally known, who being by me duly sworn, said that he is President of Western Gas Company, a Corporation organized under the laws of the State of Arizona, and that the seal affixed to said instrument is the corporate seal of said corporation and that the said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said

acknowledged said instrument to be the free act and deed of said corporation.

Given under my hand and seal of office this 15th day of November, 1924.

My commission expires 15th day of January, 1926.

Notary Public in and for the County of Pima, State of Arizona.

Filed and recorded at request of Western Gas Co Inc & at 2:15 PM 1924  
 \$1102  
 COMPARED  
 Read by  
 Read to  
 Anna Sullivan, County Recorder  
 By William W. Calkins, Deputy

Figure 8: 1933 EPNG's easement



F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: BMV  
DEPUTY RECORDER  
1985 PE5



DOCKET: 12687  
PAGE: 746  
NO. OF PAGES: 4  
SEQUENCE: 20052280171  
11/25/2005  
AMEN 16:21  
MAIL  
AMOUNT PAID \$ 10.00

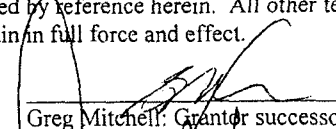
W  
EL PASO WESTERN PIPELINE  
PO BOX 1087  
COLORADO SPRINGS CO 80944

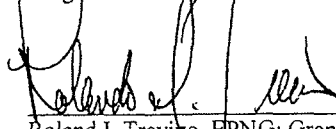
### AMENDMENT TO RIGHT-OF-WAY

That certain right-of-way between Mrs. F. D. Pine ("Grantor") and Western Gas Company ("Grantee") dated November 27, 1933 covering property lying and situated in Pima County, State of Arizona, to-wit:

East half NW quarter and NE quarter SW quarter, Section 20, Township  
12 South, Range 12 East

and recorded in Book 51 of Miscellaneous Records, Page 125 in the records of the State of Arizona, County of Pima is hereby amended to affect and cover that certain 40 foot corridor as set forth on the attached survey ("Exhibit A 1 of 2") and legal description ("Exhibit A 2 of 2") which are incorporated by reference herein. All other terms and conditions of the Right-of-Way shall remain in full force and effect.

  
Greg Mitchell: Grantor successor in interest

  
Roland I. Trevino, EPNG: Grantee  
successor in interest

RECORDED  
11/25/05

RECORDED 69196  
11/25/05 502-580

Figure 9: Page 1 of 2005 EPNG's 40' easement



ACKNOWLEDGEMENT

STATE OF ARIZONA

COUNTY OF PIMA

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day  
of April, 2005, by Greg Mitchell in his capacity as the Manager of  
Sidewinder, LLC, Management Company for Rattlesnake Pass, LLC.

Christine M. Wallace

Notary Public

My Commission Expires:



ACKNOWLEDGEMENT

STATE OF ARIZONA

COUNTY OF PIMA

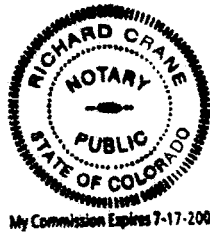
The foregoing instrument was acknowledged before me this 8<sup>th</sup> day  
of November, 2005, by Rolando I. Trevino.

Richard Crane

Notary Public

My Commission Expires:

7-17-2009



2005 NOV 10 10:47 AM

1

2

Figure 10: Page 2 of 2005 EPNG's 40' easement



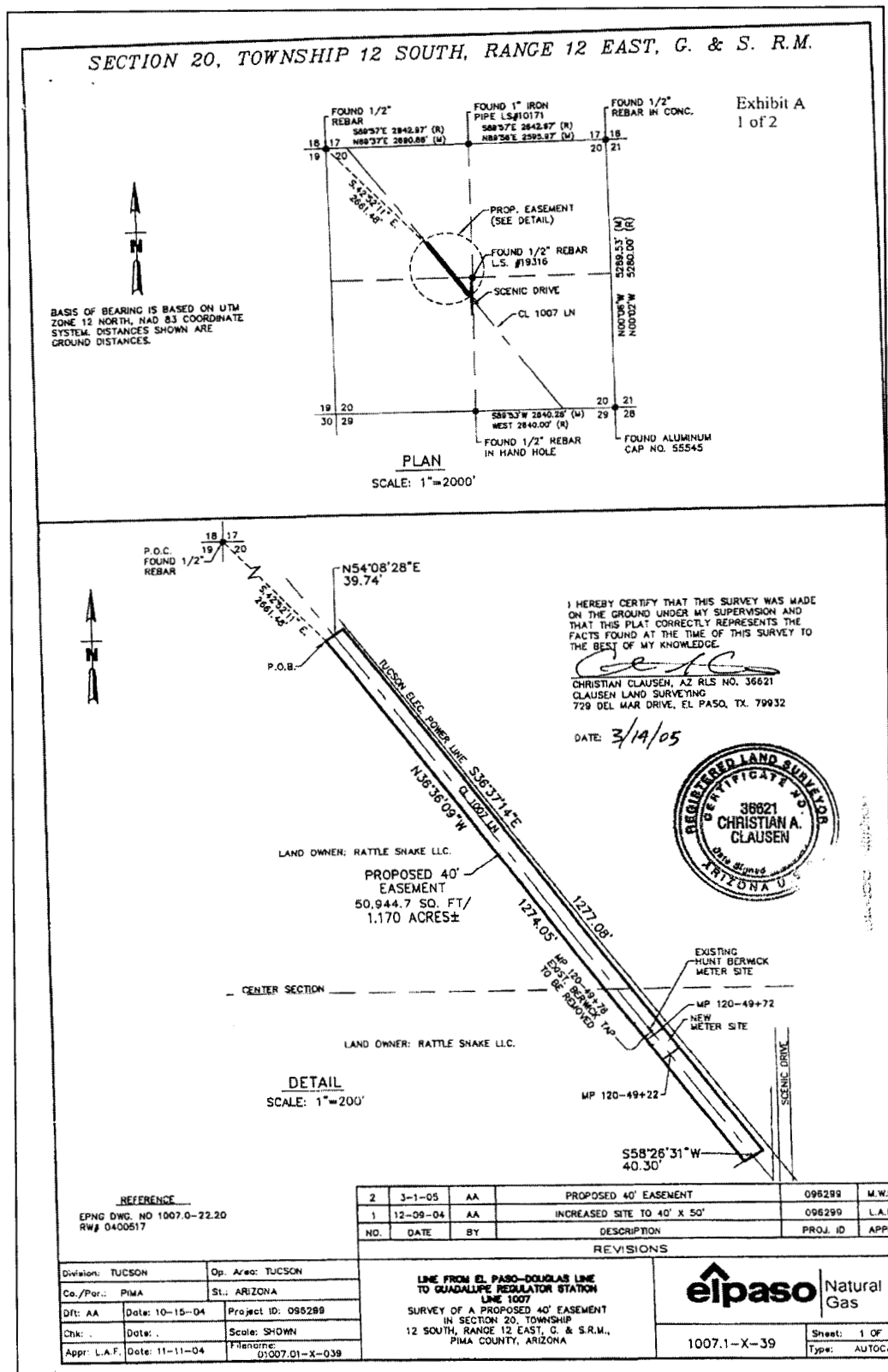


Figure 11: Page 3 of 2005 EPNG's 40' easement



LINE FROM EL PASO-DOUGLAS LINE  
TO GUADALUPE REGULATOR STATION  
LINE 1007  
SURVEY OF A 40' EASEMENT  
IN SECTION 20, TOWNSHIP  
12 SOUTH, RANGE 12 EAST, G. & S.R.M.,  
PIMA COUNTY, ARIZONA  
(50,944.7 SQUARE FEET OR 1.170 ACRES±)

Exhibit A  
2 of 2

Tract of land situate within the corporate limits of Pima County, Arizona, as a portion of Section 20, Township 12 South, Range 12 East, G. & S. R. M., more particularly described as follows to wit:

COMMENCING for reference at a 1/2" rebar found for the northwest corner of said Section 20, whence a 1/2" rebar in concrete found for the northeast corner of said Section 20 bears the following two courses;

N.89°37'E., 2690.66, feet to a 1" iron pipe LS# 10171 found in the vicinity of the north 1/4 of Section 20;

N.89°56'E., 2595.97 feet to a 1/2" rebar in concrete found for the northeast corner of said Section 20;

THENCE, S.42°52'11"E., 2661.48 feet to the POINT OF BEGINNING of the tract herein described;

THENCE, N.54° 08'28"E., 39.74 feet, to a point for the northeasterly corner of the tract herein described;

THENCE, S.36°37'14"E., 1277.08 feet, to a point for the southeasterly corner of the tract herein described;

THENCE, S.56°26'31"W., 40.30 feet to a point for the southwesterly corner of the tract herein described;

THENCE, N.36°36'09"W., 1274.05 feet to the POINT OF BEGINNING.

Said parcel containing 50,944.7 Square Feet or 1.170 Acres, more or less, and being subject to any easements, restrictions, and covenants of record.

This easement description is intended to be interpreted along with a survey drawing of even date attached here to.

Basis of Bearing is based on UTM Zone 12 North, NAD 83 coordinate system. Distances shown are ground distances.

*Christian Clausen*  
CHRISTIAN CLAUSEN, AZ RLS NO. 36621  
CLAUSEN LAND SURVEYING  
729 DEL MAR DRIVE, EL PASO, TX 79932

3/14/05

PREPARED BY:  
Brock & Bustillos Inc.  
417 Executive Center Blvd.  
El Paso, Texas 79902  
(915)542-1900  
Job No. S5200-94LN1007  
40' EASEMENT  
Nov. 03, 2004  
Revised: Dec. 09, 2004  
Revised: March 1, 2005



REFERENCE  
EPNG DWG. NO 1007.0-22.20  
RW# 0400517

NO.	DATE	BY	DESCRIPTION	PROJ. ID	APP.
2	3-1-05	AA	PROPOSED 40' EASEMENT	096299	M.W.
1	12-09-04	AA	INCREASED SITE TO 40' X 50'	096299	L.A.F.

REVISIONS

Division: TUCSON	Op. Area: TUCSON	<p>LINE FROM EL PASO-DOUGLAS LINE TO GUADALUPE REGULATOR STATION LINE 1007 SURVEY OF A PROPOSED 40' EASEMENT IN SECTION 20, TOWNSHIP 12 SOUTH, RANGE 12 EAST, G. &amp; S.R.M., PIMA COUNTY, ARIZONA</p>		<p>1007.1-X-39</p>	<p>Sheet: 2 OF 2 Type: LEGAL</p>
Co./Par.: PIMA	St.: ARIZONA				
DIC: AA	Date: 10-15-04				
Chk: .	Date: .				
Appr: L.A.F.	Date: 11-11-04	Scale: SHOWN	Filename: 01007.01-X-039		

Figure 12: Page 4 of 2005 EPNG's 40' easement



F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: BMV  
DEPUTY RECORDER  
1985 PE5

W  
EL PASO WESTERN PIPELINE  
PO BOX 1087  
COLORADO SPRINGS CO 80944



DOCKET: 12687  
PAGE: 750  
NO. OF PAGES: 5  
SEQUENCE: 20052280172  
11/25/2005  
RWAY 16:21  
MAIL  
AMOUNT PAID \$ 10.00

5001554

**RIGHT OF WAY AND EASEMENT**  
FM 9-100AZ (Rev. 10/94)

STATE OF ARIZONA

COUNTY OF PIMA

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, hereinafter referred to as Grantor, for and in consideration of the sum of TEN DOLLARS and other good and valuable consideration, to the Grantor in hand paid by EL PASO NATURAL GAS COMPANY, a Delaware corporation, hereinafter referred to as Grantee, the receipt of which is hereby acknowledged, does hereby grant, sell and convey unto said Grantee, its successors and assigns, an exclusive easement covering land set forth below in the Description Of Facilities and Land Subject to Exclusive Easement ("Exclusive Easement") to locate, construct, maintain and operate the hereinafter described facilities. In addition, Grantor hereby grants to Grantee a non-exclusive right of way and easement of ingress and egress to and from, and access on and along said land, with the non-exclusive right to use existing roads, for the purpose of constructing, inspecting, repairing and maintaining the facilities and the removal or replacement of same at will, either in whole or in part on property set forth in the Exclusive Easement. The property subject to this non-exclusive right of way and easement shall also include a non-exclusive grant of ingress and egress by, through and across a ten (10) foot corridor directly east of the Exclusive Easement ("Non-Exclusive Easement").

TO HAVE AND TO HOLD the above described rights and easements, together with all rights necessary to operate and maintain the facilities on the Exclusive Easement hereby granted unto the said Grantee, its successors and permitted assigns, and the Grantee may assign the rights and easements herein granted, either in whole or in part, subject to the terms of this grant, and such rights and easements shall be covenants running with the land and be binding upon Grantor, his heirs, legal representatives and successors in title.

Grantee may at any time and upon abandonment of said easement execute and record a reconveyance and release hereof, whereupon this right of way and easement and all rights and privileges herein mutually granted shall be fully canceled and terminated.

Grantor represents and warrants that he is the owner in fee simple of the land hereinafter described, subject only to outstanding mortgages, if any, now of record in said county.

It is hereby understood that the parties securing this grant in behalf of the Grantee are without authority to make any covenant or agreement not herein expressed.

Grantee shall not permit or allow access to the facilities to the general public.

Grantee shall at all times design, construct, operate and maintain the facilities in compliance with all applicable Governmental requirements, including but not limited to all environmental laws, rules and regulations and shall indemnify and hold Grantor free and harmless therefore.

In the event of any default by Grantee in its obligations and upon Grantees failure to cure any such default within a reasonable period of time, Grantor may terminate this grant, seek damages, or both.

**DESCRIPTION OF FACILITIES AND LAND SUBJECT TO EXCLUSIVE EASEMENT**

A 40' x 50' site located within the existing El Paso Natural Gas Company forty (40) foot right-of-way and easement, which said 40' x 50' site being more particularly described within "Exhibit A" attached and made a part of hereto, for above ground natural gas pipelines, regulating equipment, cathodic equipment with all necessary valves, fittings, piping, meters and measuring equipment with connecting pipelines and including related communications equipment, with all necessary appurtenances thereto. Grantee will fence in the 40' x 50' portion of the property. In addition to the above stated terms the following stipulations will be followed:

REG. NO. 69199

Page 1 of 3

Figure 13: Page 1 of 5; 2005 EPNG exclusive 40' x 50' easement







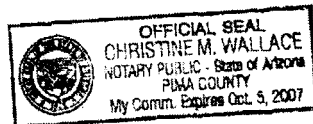
## ACKNOWLEDGEMENT

STATE OF ARIZONA

COUNTY OF PIMA

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of April, 2005, by Greg Mitchell in his capacity as the Manager of Sidewinder, LLC, Management Company for Rattlesnake Pass, LLC.

Christine M. Wallace  
Notary Public

**My Commission Expires:**

1420007 007-1507

Page 3 of 3



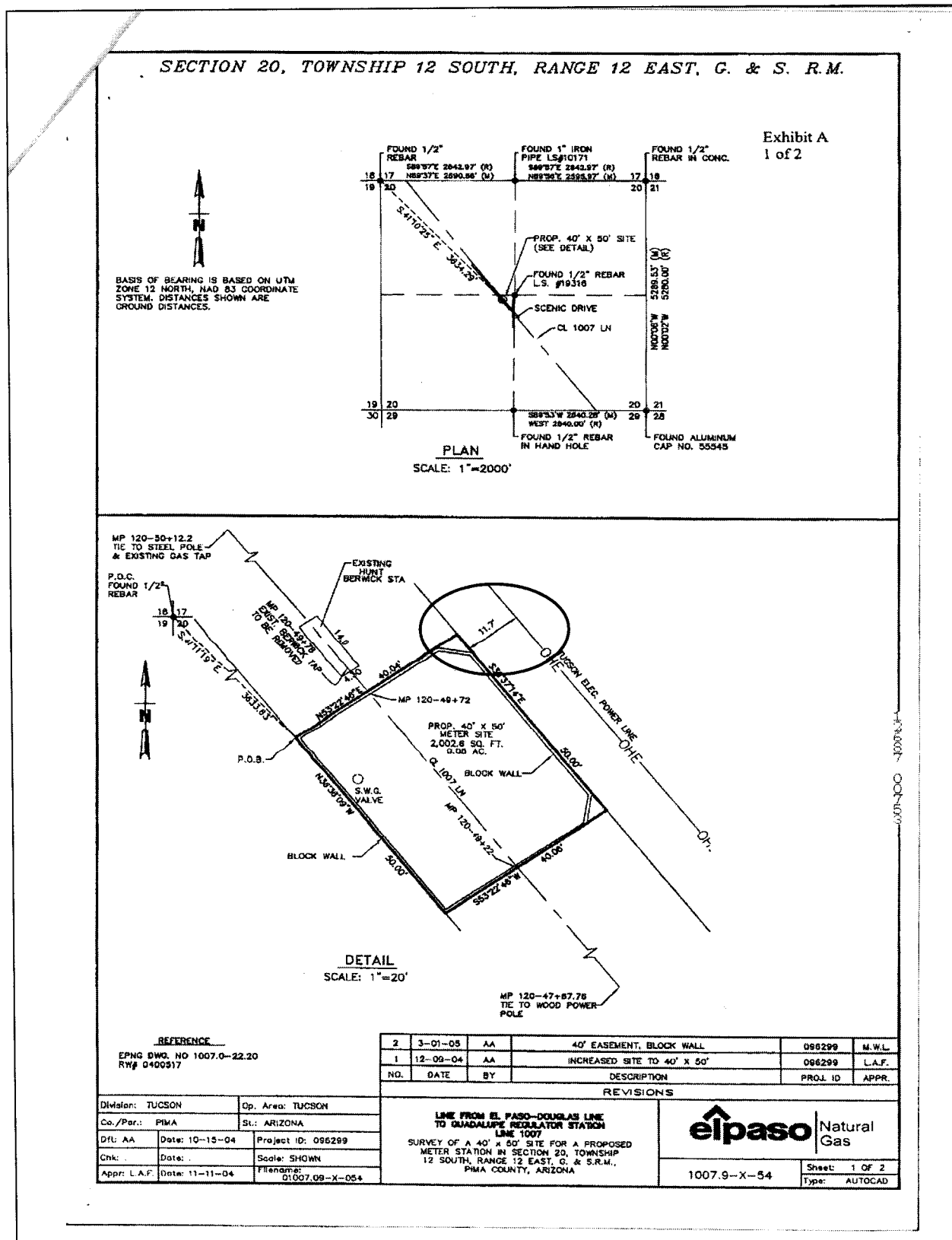


Figure 16: Page 4 of 5; 2005 EPNG exclusive 40' x 50' easement



**LINE FROM EL PASO-DOUGLAS LINE  
TO GUADALUPE REGULATOR STATION  
LINE 1007**  
SURVEY OF A 40' x 50' SITE FOR A PROPOSED  
METER STATION IN SECTION 20, TOWNSHIP  
12 SOUTH, RANGE 12 EAST, G. & S.R.M.,  
PIMA COUNTY, ARIZONA  
(2,000.0 SQUARE FEET OR 0.05 ACRES)

Exhibit A  
2 of 2

Tract of land situate within the corporate limits of Pima County, Arizona, as a portion of Section 20, Township 12 South, Range 12 East, G. & S. R. M., more particular described as follows to wit:

COMMENCING for reference at a 1/2" rebar found for the northwest corner of said Section 20, whence a 1/2" rebar in concrete found for the northeast corner of said Section 20 bears the following two courses:

N.89°37'E., 2690.66, feet to a 1" iron pipe LS# 10171 found in the vicinity of the north 1/4 of Section 20;

N.89°56'E., 2595.97 feet to a 1/2" rebar in concrete found for the northeast corner of said Section 20;

THENCE, S.41°11'19"E., 3633.63 feet to a point for the POINT OF BEGINNING the tract herein described;

THENCE, N.53° 22'46"E., 40.04 feet, to a point for the northeasterly corner of the tract herein described;

THENCE, S.36°37'14"E., 50.00 feet, to a point for the southeasterly corner of the tract herein described;

THENCE, S.53°22'46"W., 40.06 feet to a point for the southwesterly corner of the tract herein described;

THENCE, N.36°36'09"W., 50.00 feet to the POINT OF BEGINNING.

Said parcel containing 2,002.6 Square Feet or 0.05 Acres, more or less, and being subject to any easements, restrictions, and covenants of record.

This site description is intended to be interpreted along with a survey drawing of even date attached here to.

Basis of Bearing is based on UTM Zone 12 North, NAD 83 coordinate system. Distances shown are ground distances.

PREPARED BY:  
Brock & Bustillos Inc.  
4174 Executive Center Blvd.  
El Paso, Texas 79902  
(915)542-4900  
Job No. 55200-94LN1007  
40 X 50 SITE  
Nov. 03, 2004  
Revised: Dec. 09, 2004  
Revised: March 1, 2005

REFERENCE

EPNG DWG. NO 1007.0-22.20  
RW# 0400517


EPNG DWG. NO 1007.0-22.20 Rwg 0400517			112-09-04AAINCREASED SITE TO 40' X 50'098299L.A.F.		
NO. DATE BY			DESCRIPTIONPROJ. IDAPPR.		
REVISIONS					
Division: TUCSON		Op. Area: TUCSON			
Co./Par.: PIMA		St.: ARIZONA			
Dft: AA	Date: 10-15-04	Project ID: 098299			
Chk: .	Date: .	Scale: SHOWN			
Appr: L.A.F.	Date: 11-11-04	Filename: 01007.09-x-055			
LINE FROM EL PASO-DOUGLAS LINE TO GUADALUPE REGULATOR STATION LINE 1007 SURVEY OF A 40' x 50' SITE FOR A PROPOSED METER STATION IN SECTION 20, TOWNSHIP 12 SOUTH, RANGE 12 EAST, G. & S.R.M., PIMA COUNTY, ARIZONA					
1007.9-X-55			Sheet: 2 OF 2 Type: LEGAL		

Figure 17: Page 5 of 5; 2005 EPNG exclusive 40' x 50' easement



1 **References: Arizona Revised Status**

2 **Arizona Revised Statutes - Title 40 Public Utilities and Carriers - Section 40-361 Charges by**  
3 **public service corporations required to be just and reasonable; service and facilities required**  
4 **to be adequate, efficient and reasonable; rules and regulations relating to charges or service**  
5 **required to be just and reasonable**

6 **40-361.** Charges by public service corporations required to be just and reasonable; service and facilities  
7 required to be adequate, efficient and reasonable; rules and regulations relating to charges or service  
8 required to be just and reasonable

9 **A.** Charges demanded or received by a public service corporation for any commodity or service shall be  
10 just and reasonable. Every unjust or unreasonable charge demanded or received is prohibited and  
11 unlawful.

12 **B.** Every public service corporation shall furnish and maintain such service, equipment and facilities as  
13 will promote the safety, health, comfort and convenience of its patrons, employees and the public, and  
14 as will be in all respects adequate, efficient and reasonable.

15 **C.** All rules and regulations made by a public service corporation affecting or pertaining to its charges or  
16 service to the public shall be just and reasonable.

17  
18 **Arizona Revised Statutes - Title 13 Criminal Code - Chapter 15 Criminal Trespass and Burglary**

19 **13-1502.** Criminal trespass in the third degree; classification

20 **A.** A person commits criminal trespass in the third degree by:

21 **1.** Knowingly entering or remaining unlawfully on any real property after a reasonable request to leave  
22 by the owner or any other person having lawful control over such property, or reasonable notice  
23 prohibiting entry.

24 **2.** Knowingly entering or remaining unlawfully on the right-of-way for tracks, or the storage or switching  
25 yards or rolling stock of a railroad company.

26 **B.** Criminal trespass in the third degree is a class 3 misdemeanor.



1    **13-1602. Criminal damage; classification**

2    A. A person commits criminal damage by recklessly:

3       1. Defacing or damaging property of another person; or

4       2. Tampering with property of another person so as substantially to impair its function or value; or

5       3. Tampering with or damaging the property of a utility.

6       4. Parking any vehicle in such a manner as to deprive livestock of access to the only reasonably available  
7       water.

8       5. Drawing or inscribing a message, slogan, sign or symbol that is made on any public or private building,  
9       structure or surface, except the ground, and that is made without permission of the owner.

10   B. Criminal damage is punished as follows:

11       1. Criminal damage is a class 4 felony if the person recklessly damages property of another in an amount  
12       of ten thousand dollars or more.

13       2. Criminal damage is a class 4 felony if the person recklessly damages the property of a utility in an  
14       amount of five thousand dollars or more or if the person recklessly causes impairment of the functioning  
15       of any utility.

16       3. Criminal damage is a class 5 felony if the person recklessly damages property of another in an amount  
17       of two thousand dollars or more but less than ten thousand dollars.

18       4. Criminal damage is a class 6 felony if the person recklessly damages the property of another in an  
19       amount of one thousand dollars or more but less than two thousand dollars.

20       5. Criminal damage is a class 1 misdemeanor if the person recklessly damages property of another in an  
21       amount of more than two hundred fifty dollars but less than one thousand dollars.

22       6. In all other cases criminal damage is a class 2 misdemeanor.

23

24



**Arizona Revised Statutes - Title 40 Public Utilities and Carriers - Section 40-336 Power of commission to require safety devices**

**40-336. Power of commission to require safety devices**

The commission may by order, rule or regulation, require every public service corporation to maintain and operate its line, plant, system, equipment, and premises in a manner which will promote and safeguard the health and safety of its employees, passengers, customers and the public, and may prescribe the installation, use, maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signaling, establish uniform or other standards of equipment, and require the performance of any other act which health or safety requires.

**Arizona Revised Statutes - Title 40 Public Utilities and Carriers - Section 40-321 Power of commission to determine adequacy of service rendered by public service corporation; enforcement by order or regulation; duty of compliance by corporation; surety; utility surety fund**

**40-321. Power of commission to determine adequacy of service rendered by public service corporation; enforcement by order or regulation; duty of compliance by corporation; surety; utility surety fund**

**A.** When the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, **the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation.**

**B.** The commission shall prescribe regulations for the performance of any service or the furnishing of any commodity, and upon proper demand and tender of rates, the public service corporation shall furnish the commodity or render the service within the time and upon the conditions prescribed.

**C.** If, after notice and an opportunity to be heard, the commission finds that a public service corporation is in default of the terms and conditions of an order of the commission that requires a performance bond, irrevocable letter of credit or other surety, and the commission exercises its rights under the bond, letter or other surety, the commission shall deposit all monies received as a result of exercising the rights in the utility surety fund established by subsection D of this section.

**D.** The utility surety fund is established consisting of monies received by the commission pursuant to subsection C of this section. Monies in the utility surety fund shall be administered by the commission for the benefit of the customers of the public service corporation who have incurred a loss of services or commodities or for deposit support pursuant to this section. Monies in the fund are continuously appropriated to the commission and do not revert to the state general fund pursuant to section 35-190



**Arizona Revised Statutes - Title 40 Public Utilities and Carriers - Section 40-246 Complaint  
alleging violation by public service corporation of law or rule or order of commission;  
exception; joinder of complaints; notice of hearing**

**40-246.** Complaint alleging violation by public service corporation of law or rule or order of commission;  
exception; joinder of complaints; notice of hearing

- A. Complaint may be made by the commission of its own motion, or by any person or association of persons by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or any order or rule of the commission, but no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless it is signed by the mayor or a majority of the legislative body of the city or town within which the alleged violation occurred, or by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service.
- B. All matters upon which complaint may be founded may be joined in one hearing, and a complaint is not defective for misjoinder or nonjoinder of parties or causes, either before the commission, or on review by the courts. The commission need not dismiss a complaint because of the absence of direct damage to the complainant.
- C. Upon filing the complaint, the commission shall set the time when and a place where a hearing will be had upon it and shall serve notice thereof, with a copy of the complaint, upon the party complained of not less than ten days before the time set for the hearing, unless the commission finds that public necessity requires that the hearing be held at an earlier date. Service may be made as a summons in a civil action is required to be served, or may be made in any manner giving actual notice, and no irregularity in the service is an excuse or defense.